

Request for Proposals (RFP)
Facility Management Services for
Westwind Community Barn
Answers and Clarifications to Written Questions Submitted
Date: March 1, 2013

Basic Maintenance and Operation

1. What is the current method for fly control? Is there a misting system in place?
The Town employs four methods of fly control:
 - 1) Fly eliminators
 - 2) Residual pesticides
 - 3) Regular, aggressive cleaning of all manure from the facility (stalls, paddocks, arenas and the pasture)
 - 4) Waste is stored in an enclosed binThe Town does not have a misting system in place.
2. What are the specific "Town approved sanitation procedures and practices for manure disposal, rodents, pest, and fly management?"
GreenWaste Recovery currently holds the manure disposal contract with the Town and is serviced weekly on Thursdays. For rodent and pest control the Town requires using integrated pest management practices with no or safe chemical solutions. Regarding fly management see above #1.
3. Which of the current costs (i.e., waste removal, utilities, water) will the vendor be responsible for, which will remain responsibility of the Town and which are negotiable?
The Town is responsible for the following utility costs: waste removal, utilities and water.
4. Who is responsible for the utilities?
The Town will remain responsible for utilities.
5. Can you provide the billing statements?
N/A
6. Item 4 in the Section titled Basic Maintenance and Operations mentions performing "minor repairs to the facility per Town standards." What are Town standards?
Town standards are to complete repairs to the facility to better or equal quality than existing conditions. For example, if a stall board is broken the Town standards would be to replace the board with the same type and style of wood and stain it to match the existing.
7. In Item 5 in the section titled Basic Maintenance and Operations mentions that the Vendor is responsible for "all maintenance issues..." Does this include large

items such as replacement of arena footing? If not, please provide a more detailed list of what is considered routine maintenance issues.

The Facility Manager is responsible for all maintenance and repair of the existing facility. The Facility Manager would not be responsible for any major capital improvements. However, the Facility Manager is expected to timely advise the Town on the need of such capital improvement projects.. **The bidder shall submit a Facility Management and Operation Plan as part of the proposal addressing the details and frequency of tasks involving the daily operations, routine maintenance and sanitation practices.**

8. What are landscaping and grounds requirements and are these the responsibility of the Town or the vendor (lawn mowing, watering and fertilizing, any arbor costs for trees etc., roadway repair and upkeep, signage, etc.)?

The Facility Manager will be responsible for maintaining landscaping, grounds, weeding and tree trimming to current Town standards. Driveway, roadway and signage will remain responsibilities of the Town.

9. What are the most frequent maintenance issues around the barn? Are there any unusual maintenance issues of a recurring nature? Any other issues specific to this location?

The most common maintenance issues include repairing broken fencing, replacing boards in the arena fencing, unclogging drains, repairing broken underground pipes and tractor repairs. This location has several underground springs that can leach water onto paths and into paddocks year round. Grass and weeds must be mowed down by a large tractor when it exceeds two feet in height. This includes most of the area in the lower portion of the facility; around the lower arena and pasture.

10. It was stated during the tour that Byrne Preserve is off limits to boarder horses due to liability reasons. What are the liability concerns?

The Byrne Preserve has several public pathways running through it. These pathways are regularly used by the general public, many of whom have no experience with horses. The nine public service horses in Byrne Preserve have been specifically trained to respect humans and not display herd behaviors or aggression toward them.

11. What are the agreements and responsibilities of the Barn toward Byrne Preserve?

Byrne Preserve is a 50+ acre Open Space Preserve adjacent to Westwind Community Barn and is not part of the Facility Management RFP.

Horse Care

12. Please provide clarification of 4-H - the cleaning and feeding are spelled out in the RFP. However, who is responsible for purchase of feed, bedding, water, electricity? Does 4-H pay the Town directly for board?

The Facility Manager will be responsible for purchasing the feed and bedding

associated with the care of the 4-H horses as noted on page 5 of the RFP. 4-H has a separate Agreement with the Town for these services.

13. Please confirm the Year Round Riding Program horses live in the preserve, require no feed, no bedding, and thus, no cleaning. Also, please confirm that board for these 9 horses is paid directly to the town.
Seven horses from the Year Round Riding Program and two horses from the 4-H Program live in Byrne Preserve and require no feed, no bedding and no cleaning. The Town has a separate boarding agreements with 4-H and the vendor of the YRRP.
14. Are there any specific requirements or standards concerning feed and/or bedding (i.e. certified weed free, organic etc.)?
Horses must remain on high quality hay. There is a 2" minimum of bedding in each stall. There should be no urine smell.

Personnel and Scheduling of Work

15. Please clarify the Town's request for optional overnight coverage? Is the intent for a specific manned shift or an on-call shift?
The overnight coverage option is for 24/7 supervision manned shift.
16. Is overnight housing available on site? If so, what are the terms of use?
There is no overnight housing available onsite.
17. What is required for overnight staffing?
The overnight staff shall be on duty and performing tasks from 6:00pm-6:00am.
18. Are the current vendors allowed to be disclosed so we may know their rates and contact them to discuss their possible interest in continuing work at the barn?
The Town may make some of this information available to the selected Facility Manager.

Contractor Requirements

19. Can you give me the amounts required for all the insurance policies?
The Town's standard requirement include: no less than \$1,000,000 limit per accident for Workers' Compensation; no less than \$1,000,000 limit per occurrence for general, professional and automobile liability. The Town may require additional coverage for this agreement if recommended by the City Attorney and/or the Town's Risk Management consultant.
20. Are the tractor, drag, roller and other pieces of equipment, if any, going to remain on site for use? If yes, will there be a rental fee? Who will be responsible for maintenance and the costs incurred for doing so?
The Town will make some of the equipment available for purchase to the selected vendor. The Facility Manager will be responsible for any costs associated with such equipment.

21. What, if any, of the current equipment will be available for use, lease or purchase by the vendor? (Please include information about administrative equipment as well – telephones, computers, etc.)

The Town may make some of the equipment available for purchase. The Facility Manager will need to supply their own administrative equipment including: telephone, computer, printer, etc. The public barn phone will remain a utility of the Town.

Other

22. Is this the first time Los Altos Hills has offered Westwind as a lease instead of operating it through the city? If so, why?

Friends of Westwind, a now defunct nonprofit organization, leased the Westwind Community Barn from the Town for 29 years until 2008. The Town took over management in 2008. This RFP is not for a lease but rather a contract where the Town will pay the most qualified vendor to serve as the Facility Manager at Westwind Community Barn.

23. Is the current barn manager and staff hoping to stay on?

The Town will consider any proposal that includes existing and/or new staff.

24. Can you provide profit and loss statements for the year?

The Town will make this information available to the selected vendor.

25. Can you provide me with a list of vendors for hay, shavings, waste, etc...?

The Town contracts with Pastorino Hay for feed supply, Eagle Valley for bedding, Arbico Organics and Killroy Pest Control for pest management, and GreenWaste for waste management.

26. Please confirm manure management is fully covered per prior arrangements with GreenWaste and that no further costs need be assumed in the proposal.

The Town's contract with GreenWaste covers manure removal.

27. Any past or current lawsuits or claims?

There are no current lawsuits or claims. The Town was named in a lawsuit in 2006 which has since been settled.

28. How many boarders currently partake in the part time training offered for a fee? How many partake in the full time training?

Boarders enrolled in the training programs fluctuate. The Facility Manager will not be responsible for training or instruction.

29. Current Rate Sheet offers 45 min lessons for a specified rate. Who has been instructing these lessons? Are these separate from the riding program?

Approximately how many lessons on average have been provided weekly in the previous months?

Facility Manager will not be responsible for training or instruction.

30. Please clarify who runs the Pony Club and what horses are utilized for this program?

For more information regarding the Pacific Ridge Pony Club please visit their website at pacificridge.ponyclub.org. The Pony Club provides their own horses.

31. What is the average output of the well on site?

This is dependent on rainfall. As stated in question # 3 Facility Manager will not be responsible for the water bill.

32. For loading purposes, how high is the hayloft above the ground?

The hayloft is approximately 10 feet from the ground.

33. Can the town provide the last budget?

The Town's FY2012-13 budget is available on the Town's website at http://www.losaltoshills.ca.gov/documents-forms/browse/cat_view/57-finance-a-administrative-services/104-budgets

34. Who would the vendor report to directly and day-to-day?

Facility Manager will report directly to the Town's Parks and Recreation staff. However, the Facility Manager will not be subject to day-to-day reporting to the Town.

35. Is there a mechanism in place for receiving or responding to concerns, disputes and complaints?

Currently the Barn Manager receives, responds to all concerns, disputes and complaints. The Facility Manager will be responsible for receiving and responding to all concerns, disputes and complaints.

36. Who collects board and other fees, and any other miscellaneous income?

The Town collects board and other fees as well as other miscellaneous income.

37. Who tracks timeliness of payments and collects late fees?

The Town tracks timeliness of payments and collects late fees.

38. When and how is the vendor paid?

Contract compensation is subject to negotiations, and payment schedule will be defined in contract terms.

39. Are there any bonding requirements etc. for the vendor?

No.

40. What information is required in the monthly reports?

Overall summary, incident reports, working document of boarders, vaccinations, recommendations, repair work, etc.

41. Would either party have the option of renewing or not renewing the lease at the end of the term and how often would the lease be opened up for public bid?
The contract terms are subject to negotiation. The current RFP is soliciting a contract for a two year period.
42. Can the vendor remove a boarder and, if so, for what reasons?
Pursuant to the guidelines in the rulebook a boarder may be removed after three written Rule Violation Reports. However Facility Manager must report these to the Town and receive Town approval before the removal.
43. Can the Town provide a copy of the Town of Los Altos Hills Standard Agreement for Professional Services?
Yes, please see the attachment.
44. Please describe any other stakeholders in Westwind Barn with whom the vendor will have administrative relationships (i.e., groups planning events, Board of Directors, etc.) Will the vendor have direct relationships with these stakeholders or will the Town act as intermediary?
Town staff will act as the liaison to all stakeholders. The Facility Manager will have day to day dealings with facility users and the general public.
45. Please describe the agreements between the town and the 4-H and Lesson Programs. Who owns the 4-H and lesson horses, who will carry the costs associated with these horses and who administers the use of these horses? Have the owners executed a standard boarding agreement or a different type of agreement? Is the vendor's responsibility towards these owners or the horses different than towards the regular boarders and their horses?
4-H and Excursions Unlimited own their program horses and cover all costs associated with them and administer their use. The owners have separate contracts with the Town. The Facility Manager's responsibilities to 4-H and Excursions Unlimited horses are slightly less than what is due a boarder. For example, 4-H is responsible for all costs of repairs and upgrades to their assigned barn. Excursions Unlimited is responsible for all costs of repairs to their four assigned paddocks, as well as daily cleaning and feeding of their horses. The Facility Manager will be responsible for removing the filled manure bins from Excursion Unlimited paddocks, as well as from the 4-H Barn.
46. Who schedules and/or administers any special uses of, or events held at, the facility?
The Town schedules and administers special uses of, or events held at the facility.
47. What, if any, overlap or conflicts are there with the sheriff's substation?

None.

48. What would constitute a material breach of contract by either party?

Once terms and scope of the contract are defined and finalized in the agreement document, any failure to perform and follow the contract may be considered as a “material” breach. However, any specific issues as well as contract language will be discussed and addressed during the contract negotiation stage.

Attachment:

1. General Consultant Services Agreement. 2013.pdf

**CONSULTING SERVICES AGREEMENT BETWEEN
THE TOWN OF LOS ALTOS HILLS AND
[NAME OF CONSULTANT]**

THIS AGREEMENT for consulting services is made by and between the Town of Los Altos Hills ("Town") and _____ ("Consultant") (together referred to as the "Parties") as of _____, 20__ (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Town the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the Town's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Town, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Town of such desire of Town, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.
- 1.5 **Public Works Requirements.** Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C. Consultant shall waive, indemnify, hold harmless, and defend Town concerning any liability arising out of Labor Code Section 1720 *et seq.*

[NOTE TO STAFF: IF THE SERVICES ARE NOT WITHIN THE STATUTORY DEFINITION OF A PUBLIC WORKS PROJECT, THEN SECTION 1.5 AND EXHIBIT C MAY BE DELETED. CHECK

**WITH THE TOWN ATTORNEY IF THERE IS A QUESTION ABOUT WHETHER THE SERVICES
CONSTITUTE A PUBLIC WORKS PROJECT.]**

Section 2. COMPENSATION. Town hereby agrees to pay Consultant a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. Town shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Town to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to Town in the manner specified herein. Except as specifically authorized by Town in writing, Consultant shall not bill Town for duplicate services performed by more than one person.

Consultant and Town acknowledge and agree that compensation paid by Town to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. Town therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**[NOTE TO STAFF: THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS
NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT.]**

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At Town's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the Town when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Consultant and Town. Such notice

shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and Town, if applicable.

[NOTE TO STAFF: THE 800-HOUR LIMIT HAS BEEN ADDED BECAUSE OF RECENT COURT DECISIONS THAT INDICATE THAT INDEPENDENT CONTRACTORS MAY BECOME ELIGIBLE FOR PERS AFTER 1000 HOURS OF WORK FOR A TOWN WITHIN A 12-MONTH PERIOD, ENTITLING THE CONTRACTOR TO AN EMPLOYER CONTRIBUTION FROM THE TOWN.]

- 2.2 **Monthly Payment.** Town shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Town shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.
- 2.3 **Final Payment.** Town shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to Town of a final invoice, if all services required have been satisfactorily performed.
- 2.4 **Total Payment.** Town shall pay for the services to be rendered by Consultant pursuant to this Agreement. Town shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. Town shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed \$ _____. Expenses not listed below are not chargeable to Town. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

[NOTE TO STAFF: IF NECESSARY, THE EXPENSES MAY BE INCLUDED IN OR ATTACHED AS EXHIBIT [C or D], AND THE PRECEDING LANGUAGE MODIFIED APPROPRIATELY.]

- 2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the Town or Consultant terminates this Agreement pursuant to Section 8, the Town shall compensate the Consultant for all

outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

- 2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

[NOTE TO STAFF: SECTION 3 MAY BE MODIFIED AS NECESSARY FOR THE TYPE OF WORK.]

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. Town shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Town shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Town employees and reviewing records and the information in possession of the Town. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of Town. In no event shall Town be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to Town of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the Town. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to Town. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

- 4.1 **Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$_____ **[dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required]** per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion

of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the Town and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$_____ [dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an occurrence basis, and not on a claims-made basis.
- b. Town, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the Town, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the Town.

4.3 **Professional Liability Insurance.**

4.3.1 **General requirements.** Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$ _____ **[dollar amount to be determined based on the nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required]** covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the Town for review prior to the commencement of any work under this Agreement.

4.4 **All Policies Requirements.**

4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish Town with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the Town does not receive the required insurance documents prior to the Consultant

beginning work, it shall not waive the Consultant's obligation to provide them. The Town reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of Town for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies Town may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Town may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Town may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend with counsel acceptable to Town, and hold harmless Town and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of Town.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the Town, unless this time has been extended by the Town. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the Town, may be retained by the Town until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Town, Consultant shall indemnify, defend, and hold harmless Town for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Town.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Town. Town shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise Town shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other Town, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Town, including but not limited to eligibility to enroll in the California Public Employees Retirement

System (PERS) as an employee of Town and entitlement to any contribution to be paid by Town for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant Not an Agent.** Except as Town may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Town in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Town to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which Town is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Town that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Town that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from Town.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** Town may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon _____ days' written notice to Town and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; Town, however, may condition payment of such compensation upon Consultant delivering to Town any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the Town in connection with this Agreement.

- 8.2 **Extension.** Town may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if Town grants such an extension, Town shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, Town shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** Town and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to Town for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Town and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, Town's remedies shall included, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

- 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
- 8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that Town would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Town. Consultant hereby agrees to deliver those documents to the Town upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Town and are not necessarily suitable for any future or other use. Town and Consultant agree that, until final approval by Town, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Town under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Town. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Town or as part of any audit of the Town, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Monterey or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Town or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Town official in the work performed pursuant to this Agreement. No officer or employee of Town shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the Town. If Consultant was an employee, agent, appointee, or official of the Town in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Town for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

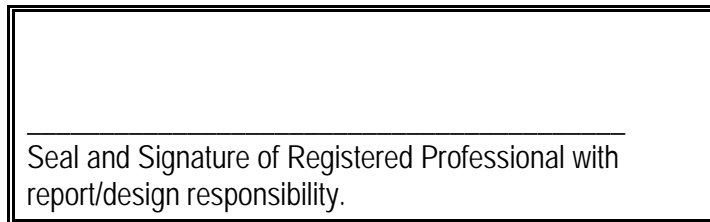
- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 **Contract Administration.** This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Consultant shall be sent to:

Any written notice to Town shall be sent to:

10.11 **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, [[and]C], and D] **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** represents the entire and integrated agreement between Town and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services
Exhibit B Payment Schedule
Exhibit C Public Works Requirements **[DELETE IF NOT APPLICABLE]**
Exhibit [C or D] Expenses **[DELETE IF NOT APPLICABLE]**

10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

TOWN OF LOS ALTOS HILLS

CONSULTANT

_____, Town Manager

[NAME, TITLE]

Attest:

_____, Town Clerk

Approved as to Form:

Steven T. Mattas, Town Attorney

1070873.1

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the Town \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the Town has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Town Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of

prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the

Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

EXHIBIT [C OR D]
REIMBURSABLE EXPENSES